

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST,
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY, and
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and MCKESSON CORPORATION,
a Delaware corporation,

Defendants.

Case No. 1:05-CV-11148-PBS

**DEFENDANT MCKESSON CORPORATION'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rule of Civil Procedure 37(a)(2)(B), Defendant McKesson Corporation respectfully moves this Court to compel production of documents responsive to McKesson Corporation's First Request for Production of Documents to Plaintiffs. The grounds for this motion are stated in the Memorandum in Support of Defendant McKesson Corporation's Motion to Compel Production of Documents.

WHEREFORE, for the reasons set forth in the memorandum described above, Defendant McKesson respectfully requests that the Court grant its motion to compel production of documents in response to Request Nos. 1, 7, 8, 10, 12, 14, 16, 17, 22, 26, 31-33, 38, 39, 41, 52, 53, 55, and 57 of McKesson's First Request for Production of Documents to Plaintiffs, and to enter an Order compelling plaintiffs to produce for inspection and copying by McKesson:

- a. all documents that are responsive to Request Nos. 7, 8, 10, 12, 14, 16, 22, 26, 31-33, 38, 39, 52, 53, 55, and 57, or, in the alternative, all documents produced in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL 1456, No. 01-12257-PBS (the "MDL") by any pharmaceutical manufacturer, retailer, third party payor, or consultant of a third party payor, so that McKesson and search for and copy documents responsive to these requests;

- b. all transcripts of depositions taken in the MDL of any representative of any MDL defendant (Request No. 1);
- c. all documents concerning any payments made for subject drugs by any participant covered by any third party payor (Request No. 41); and
- d. all documents concerning any proposed settlement between any plaintiff and defendant First DataBank (Request No. 17).

McKesson further moves for entry of an Order providing that plaintiffs shall be precluded from using any documents from the MDL record that are responsive to McKesson's First Request for Production of Documents that plaintiffs have refused to date to produce.

REQUEST FOR ORAL ARGUMENT

Defendant McKesson Corporation believes that oral argument will assist the Court in deciding this motion, and respectfully requests that the Court hear oral argument on this motion.

Dated: June 28, 2006

McKesson Corporation
By its attorneys:

/s/ Paul Flum

Joan M. Griffin, BBO # 549522
Michael P. Twohig, BBO # 648079
Burns & Levinson LLP
125 Summer Street
Boston, Massachusetts 02110
tel. (617) 345-3000
fax (617) 345-3299

Melvin R. Goldman (*pro hac vice*)
Lori A. Schechter (*pro hac vice*)
Paul Flum (*pro hac vice*)
Tiffany Cheung (*pro hac vice*)
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
tel. 415-268-7000
fax 415-268-7522

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on June 28, 2006.

/s/ Paul Flum
Paul Flum

CERTIFICATION PURSUANT TO LOCAL RULE 37.1

I, Paul Flum, counsel of record for defendant McKesson Corporation, hereby certify that counsel for McKesson conferred with counsel for plaintiffs in an effort to resolve the dispute referred to in this motion through a telephonic discovery conference and subsequent correspondence, and that the parties have not been able to reach agreement with respect thereto.

/s/ Paul Flum
Paul Flum